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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 950/2017, CM APPL.40197-40199/2017

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-2
..... Appellant

Through: Mr. Rahul Kaushik, Sr. Standing Counsel.

versus

BHARTI ENTERPRISES (HOLDING) PVT. LTD. ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

<u>O R D E R</u>

% **08.11.2017**

1. The Revenue urges three questions of law with respect to AY 2006-07 with respect to the respondent's/assessee's income. The first question relates to disallowance of ₹47,11,206/- under Section 14A of the Income Tax Act, 1961 (the Act); second pertains to ₹12,25,000/- incurred on account of the expenses, i.e., payments made to two individuals and the third pertains to the addition made by the Assessing Officer having regard to the treatment of interest for the sum of ₹2,34,05,003/- which the assessee claimed as cost of acquisition under Section 55 of the Income Tax Act, 1961.

2. So far as the first question goes, the ITAT noticed the decision of this Court in *Maxopp Investment Ltd. v. Commissioner of Income*

Tax, (2012) 347 ITR 272 (Delhi) that Rule 8D of the Income Tax Rules does not have retrospective operation. In this case, the lower authority had ruled that the provision did have retrospective operation. No question of law, therefore, arises since the ITAT merely followed the ruling of this Court in *Maxopp (supra)*.

3. As far as the second question goes, the Court is of the opinion that it is entirely factual. The assessee sold off its shares to an entity in a bid to disinvest itself of the loss making entity. The two individuals to whom the sum of ₹12,25,000/- had paid had assisted the assessee in the disinvestment move. The AO - later the CIT (A) - disallowed these amounts holding that the nature of services rendered by such individuals was not clear and the rationale in the expenditure too was not supported by any documentary evidence. Given that the disinvestment itself is not doubted as is evident from the matters reported by the assessee which are part of the record, the expenses claimed are neither disproportionate nor of the kind that facially require proof as was sought by the authorities below. Consequently, no question of law arises.

4. As far as the capitalization of the interest in the hands of the assessee in the sum of ₹2,34,05,003/- is concerned, we notice that the CIT (A) had reversed the AO's order after noting the decision of this Court in *CIT v. Mithlesh Kumari* (1973) 92 ITR 9 (Delhi) and a later decision of the Madras High Court - *CIT v. Trishul Investments Ltd.* 305 ITR 434. In those decisions, it was held that the interest paid subsequent to the date of the transfer in respect of the money

borrowed earlier to purchase the capital asset is also part of the cost of capital asset. The CIT (A) also took note of the reasoning of the Supreme Court in *Challapalli Sugar Ltd. v. CIT*, (1975) 98 ITR 167 (SC).

5. The ITAT merely affirmed the reasoning of the CIT (A). We are of the opinion that no question of law arises on this score too.

6. For the above reasons, no substantial question of law is involved; the appeal is, therefore, dismissed, along with pending applications.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

NOVEMBER 08, 2017
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